



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Temp Club of Virginia

File: B-247096

Date: April 23, 1992

Tricia M. Miller for the protester.
Ned A. Greene, Department of Agriculture, for the agency.
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DIGEST

Agency reasonably made a determination to exclude the protester's proposal from the competitive range where solicitation placed heavy emphasis on technical factors, protester's proposal ranked eighth in technical merit of 19 proposals, and protester's initial price was higher than three other proposals with significantly higher technical scores, and the evaluation record supports the agency's determination that, based on initial proposals received, the protester had no reasonable chance for award.

DECISION

The Temp Club of Virginia protests the exclusion of its proposal from the competitive range under solicitation No. WO-91-26, issued by the Forest Service for temporary clerical assistance. We deny the protest.

On August 21, 1991, the agency issued the solicitation for a firm, fixed-price requirements contract to supply temporary typing, word processing, and clerical services, from the date of award through the end of fiscal year 1992, with a 1-year option period. The solicitation provided for award to the offeror whose proposal was in the best interest of the government, considering price and listed technical criteria, including quality of service, interview and selection capabilities, and experience and company stability, with quality of service the most important selection criteria and the other two criteria equal in importance. The agency advised offerors that price would be a factor in the selection decision but would be secondary to technical factors.

The agency received 19 proposals on October 15 and referred them to its technical evaluation team, which assigned each proposal a numerical score. Five offerors received technical scores of 74 points or higher, and the other 14 offerors, the protester among them, received scores of 70 points or lower; the protester's initial price was the sixth lowest received, and its technical proposal tied for eighth. The agency eliminated the protester and the other 13 offerors with technical scores of 70 points and less from the competitive range. On December 20, the agency provided the protester with a debriefing on the strengths and weaknesses of its proposal, and this protest followed.

The protester contends that the agency decision to exclude its proposal from the competitive range was arbitrary and capricious, that its proposal was technically acceptable and competitive in price. The protester argues that the weaknesses that the agency found in its proposal consisted entirely of information not relevant to what the solicitation requested, and that its proposal did not "needlessly elaborate" on information that the solicitation did not specifically request.

In a negotiated procurement, the purpose of a competitive range determination is to select those offerors with which the contracting agency will hold written or oral discussions. Federal Acquisition Regulation (FAR) § 15.609(a) (FAC 90-7); Everpure, Inc., B-226395.2 et al., Sept. 20, 1988, 88-2 CPD ¶ 264. The competitive range is to be "determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award." FAR § 15.609(a). Even where proposal deficiencies are minor and readily correctable through discussions, the agency may properly exclude a proposal from the competitive range where, relative to other acceptable offers, the proposal has no reasonable chance of being selected for award. See Wordpro, Inc., B-242100.2, Apr. 24, 1991, 91-1 CPD ¶ 404; Hummer Assocs., B-236702, Jan. 4, 1990, 90-1 CPD ¶ 12. In reviewing protests concerning competitive range determinations, we will examine the agency's evaluation as a whole to ensure that it has a reasonable basis. American Contract Health, Inc., B-236544.2, Jan. 17, 1990, 90-1 CPD ¶ 59. Based on our review of the record, including the RFP, the evaluation documents, the protester's proposal, and the submissions of the parties, we find that the competitive range determination and the evaluation of the protester's proposal were reasonable.

Evaluators rated each offeror in three areas: quality of service, 40 points; interview and selection capabilities, 30 points; and experience and company stability, 30 points. Under each factor, the agency requested offerors to include

in their proposals certain specific information, which the agency evaluated under listed subcriteria and to which the evaluation scheme assigned specific point values.

Under quality of service, the solicitation asked offerors to "describe the company's procedures for receiving orders." The protester's proposal addressed the basic procedures of receiving information on the position being filled--hours and location--but in contrast with the higher-rated proposals, evaluators found no discussion of efforts to identify specific skills needed and no provision for reporting back to the agency on the contractor's efforts to locate a suitable temporary employee. Where the solicitation requested a description of each offeror's quality control program, evaluators found that the protester's proposal did not address written procedures for quality control and did not indicate whether the protester retained information on personnel performance in its files. The agency also asked for a description of training programs for both permanent and temporary employees; evaluators lowered the protester's technical score for lack of detail on the courses required. Where the more highly rated proposals showed frequent and ongoing efforts to train in-house staff, and provided a detailed listing of tests given including samples of some of them, the protester only offered semi-annual training of an unspecified nature and failed to indicate the extent to which temporaries were encouraged or required to take advantage of the programs "available for use" at the protester's facilities.

Under interview and selection capabilities, the agency asked offerors to describe their process of interviewing and testing candidates and the procedure for matching candidates with job requirements. The protester addressed the efforts involved in locating suitable candidates for employment but did not describe the tests given to candidate temporaries, beyond a broad statement that "both clerical and typing skills are tested." Evaluators found the description of techniques for matching available temporaries to agency needs too general and somewhat confusing. Regarding the number of temporary office workers employed by the firm, the record shows that the number of employees offered by the protester was below average.

Under experience and company stability, the solicitation asked offerors to describe their experience in providing services in the Washington, D.C., metropolitan area, with emphasis on similar contracts, to describe their managerial capabilities (corporate profile including a list of officers), and the number of years the company had been providing services in the Washington area as well as other locations. Although the protester provided points of contact for its previous contracts, the written proposal

provided the amount of only one contract (\$376,000.00), did not indicate the length of the contracts or the number of temporaries provided, and did not thoroughly demonstrate their similarity to the services being solicited. The protester received a good but less than maximum score for managerial capability, and evaluators downgraded the proposal slightly because it showed less than 18 months in business.

The record shows the agency found the protester's proposal acceptable, but that omissions and lack of the detail found in the better proposals resulted in a consistent pattern of deductions from the protester's technical score to the point where its proposal was rated substantially--7 to 18 points--lower than the five highest rated proposals. Further, the three highest rated offerors, with initial scores 12 to 18 points higher than the protester's score, all offered a lower price. While the protester contends that it provided the information requested by the solicitation, and argues that the additional information provided by the higher rated offerors was, in effect, needless elaboration, our review of the record demonstrates that information--detail on efforts to match available employees to required skills, specific information on training of permanent staff and temporary employees, and a demonstration that past contracts were similar to the instant requirement--was reasonably related to and consistent with the stated evaluation factors. We do not find the agency's evaluation of the protester's proposal to be other than reasonable.


Regarding the decision to exclude the protester's proposal from the competitive range, the record shows that based on the initial proposals received, the protester ranked eighth and significantly lower in technical merit than the top five offerors; of these five, three higher rated offerors also proposed lower prices. Despite the protester's arguments that if asked, it could have provided the additional information desired, an offeror is responsible for demonstrating affirmatively the merits of its proposal and runs the risk of rejection if it fails to do so. Microwave Solutions, Inc., B-245963, Feb. 10, 1992, 92-1 CPD ¶ 169. Based on the record before us, the decision to eliminate the protester's proposal as having no reasonable chance for award, appears reasonable and consistent with the evaluation and award factors established by the solicitation.

Prior to the receipt of initial proposals, the protester advised the agency contracting specialist that the Department of Labor had issued a new wage determination applicable to the solicitation. The agency advised the protester to base its initial proposal on the determination included in the solicitation, and that the agency would either revise the contract or amend the solicitation to reflect the

revised determination, depending upon when the agency received confirmation of the wage increase. The new determination was received after the agency had established the competitive range, and the agency asked each of the five offerors in the competitive range to submit a best and final offer (BAFO) based on the new wage determination. The protester argues that the agency should have allowed all offerors submitting proposals to respond to the wage increase.

FAR § 15.606 (FAC 90-7) provides that once the agency has established the competitive range, only offerors remaining within that range will receive any amendments to the solicitation, unless a change is "so substantial that it warrants complete revision of a solicitation." Since the wage increase was less than 4 percent, and since the agency had established the competitive range primarily based on technical factors, in accordance with the solicitation, the agency determined that the amendment likely would not change the rankings of the offerors and did not warrant reopening the competition to those offerors previously eliminated from the competitive range, including the protester. While the protester argues that allowing all offerors to submit proposals based on the new wage determination would have increased the competition for BAFOs, there is no evidence that the opportunity to submit a proposal based on the new wage determination would have enhanced the protester's competitive position, in view of its relatively low technical ranking. We find the agency's determination not to issue the amendment to offerors previously eliminated from the competitive range to be reasonable.

We deny the protest.


for James F. Hinchman
General Counsel